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10/514,407	06/09/2005	Kazuhiko Tsukanome	KYFQ-1 US	4104
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EXAMINER				
PASCUA, JES F				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/514,407

**Applicant(s)**

TSUKANOME ET AL.

**Examiner**

Jes F. Pascua

**Art Unit**

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 and 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 11-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 13 and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 4,524,460 to Twiehoff et al. See Figs. 5-7.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Twiehoff et al. and U.S. Patent No. 3,939,972 to Mayworm.

Regarding claim 11, Twiehoff et al. discloses the claimed invention except for the tubular film being a co-extrusion inflation film having a polyolefin layer in both sides of a core layer. Mayworm teaches that a bag formed from a co-extruded tubular film having innermost and outermost layers of polyethylene (which meets the recitation "polyolefin layer in both sides of a core layer") is known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the co-

extruded tubular film having innermost and outermost layers of polyethylene of Mayworm to form the bag of Twiehoff et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Applicant's remarks, filed 01/29/2009, inadequately address the Examiner's statement of design choice. Therefore, the Examiner's statement that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the co-extruded tubular film having innermost and outermost layers of polyethylene of Mayworm to form the bag of Twiehoff et al. is taken to be admitted prior art.

Regarding claim 12, Twiehoff et al. discloses the claimed invention except for the tubular film being a co-extrusion inflation film having a polyolefin layer in both sides of an un-oriented polyamide layer. Mayworm teaches that a bag formed from a co-extruded tubular film having three layers of polyolefin with an inner layer of polyamide is known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the co-extruded tubular film having three layers of polyolefin of Mayworm to form the bag of Twiehoff et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Moreover, locating the inner polyamide layer between layers of polyolefin in the Mayworm's co-extruded tubular film would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held that rearranging parts of an invention involves only routine skill in the art. Applicant's remarks, filed 01/29/2009,

inadequately address the Examiner's statements of design choice and rearranging parts. Therefore, the Examiner's statement that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the co-extruded tubular film having three layers of polyolefin of Mayworm to form the bag of Twiehoff et al. is taken to be admitted prior art. Furthermore, the Examiner's statement that locating the inner polyamide layer between layers of polyolefin in the Mayworm's co-extruded tubular film would have been obvious to one having ordinary skill in the art at the time the invention was made is taken to be admitted prior art.

As a note, the co-extruded tubular film of Mayworm is sufficiently broad to encompass applicant's claimed "tubular co-extrusion inflation film" and the polyamide layer of Mayworm is sufficiently broad to encompass applicant's claimed "un-oriented polyamide layer".

### ***Response to Arguments***

5. Applicant's arguments filed 01/29/2009 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., two separate films that form multiple layers that are joined) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

In response to applicant's argument that Twiehoff et al. includes additional structure not required by applicant's invention, it must be noted that Twiehoff et al. discloses the invention as claimed. The fact that it discloses additional structure (i.e., the valve passage) not claimed is irrelevant.

The Examiner disagrees with applicant's remark that Twiehoff et al. "fails to disclose an overlap wherein each of films of the bag is connected with each other in both side and edges thereof." Twiehoff et al. clearly discloses the multiple film forming the multiple bag is constituted by a multiple film obtained by forming a tubular film in a flat shape so as to form a two-ply film (column 4, lines 25-30) and connecting both side edges (along top and base weld seams) and end edges (along fold lines) of the two-ply film to each other.

Furthermore, Figs. 5-7 of Twiehoff et al. show the longitudinal weld seams structured by overlapping the end edges with each other in a flat shape and welding a portion near both sides of the connected end edges of the two-ply and the outer film. Therefore, the longitudinal weld seams of Twiehoff et al. meet the recited "back lining seal" and "back seal" of claims 3, 4, 13 and 14.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/  
Primary Examiner, Art Unit 3782